John Prise, Esq; Eldest Son of *Thomas Prise*, Esq; by *Mary Carne* his Wife, } Appel'

Thomas Button, Esq; Administrator of *Diana* his late Wife, } Respond'

The Appellant's CASE,

Against a Decree in Chancery, *made by Default the Twelfth of* June, 1702.

The Codicil dated 7th of July, 1684.

THE Respondent pretends, That his Wife *Diana*, since Deceased (half-Sister of the Appellant) was Entitled to a Portion of Three Thousand Pounds, and a Maintenance of Forty Pounds *per Annum*, by virtue of a Codicil annexed to the Will of her Grand-mother *Anne Prise*, charged upon Free-hold and Copy-hold Lands in *Wisteston*, in the County of *Hereford*, now in the possession of the Appellant; And that the Respondent and his said Wife afterwards agreed to abate of the said Demands, and accept from the Appellant a Thousand Pounds to be paid down, and Fifteen Hundred Pounds more at Four Years end, with Sixty Pounds *per Annum* Interest, and afterwards full Interest at 6 *l. per Cent.* And that the Appellant did pay Eight Hundred and Ten Pounds in Part of the said One Thousand Pounds.

It was the Appellant's misfortune to make Default at the Hearing of the Cause, and so the Respondent took what Decree he pleased.

12th of June, 1702. *The Decree, unless Cause.*
3d of July, 1702. *That Decree made Absolute.*
9th of July, 1702. *That Decree Enrolled.*

The Subpœna to shew Cause why the First Decree should not be Absolute, was not Served on the Appellant till the 19th of June, to shew Cause the 23d of the same June, when he was an Hundred Miles off.

By which Decree, the pretended Agreement is to be perform'd, and the Appellant is Decreed to pay an Hundred and Ninety Pounds Residue of the Thousand Pounds, with Interest, and the Fifteen Hundred Pounds, with Interest, (as before mention'd) with Costs of Suit; all to be Computed and Taxed by a Master.

And further Decreed, That if the Appellant did not Pay those Summs, that then the Appellant should Account for the Profits of the said Trust Estate; and that the Defendants *Westfaleing* and *Masters* (the Trustees appointed by the Grand-mother) should Sell so much of the Trust Estate as will Pay the Residue of the said Two Thousand Five Hundred Pounds, and Interest.

Note, That the Appellant was an Hundred Miles off all the Months of *June* and *July* last, with several of his Writings; and being a Young Gentleman, not vers'd in the Forms of the Court of *Chancery*, was made to believe by his Sollicitor (one *Reeves*) that he need not attend his Cause until *Michaelmas-Term*. But the Respondent's Sollicitor was so quick as to get a Decree Enroll'd within Six Days after it was made Absolute. And the Appellant being afterwards inform'd of it, came up to Town, and applied Twice to the Lord-Keeper, That the Cause might stand in the Paper to be Heard, and offer'd to Pay the Respondent's Costs. But his Lordship being strict to his general Rule, of not setting aside any Enrolments of Decrees, did not think fit to do it

So that the Appellant is without Remedy, but by an APPEAL to the *House of LORDS*; for he cannot bring a Bill of Review in *Chancery*, because his Case depends on several Matters of Fact, and Proofs not appearing in the Decree, as the Respondent hath Enroll'd it: So that they cannot be assign'd for Error.

Note, The Appellant would be content, not to trouble the *House of LORDS* with the Merits of the Cause, so that the Enrolment might be laid open and set aside, and that the Cause might be sent back into *Chancery*, to be Heard on the Merits, and submits to pay Costs for his Sollicitor's Neglect.

But the Respondent Complains, the Appellant is guilty of very great Delays, and particularly in putting in four or five insufficient Answers: Whereas the Vexation, as to those Answers, was occasion'd by the Respondent's Sollicitor, who still press'd the Appellant to discover the Boundaries and Values of all the Free-hold and Copy-hold Land: which it was impossible for the Appellant (being a young Gentleman lately come of Age) to do, to the Satisfaction of a very nice Sollicitor, who got more by it than his Client. And the Appellant always offer'd to produce all his Deeds, Writings and Copies; and put the Respondent forward in his Cause, by Consenting that Publication should pass at *Michaelmas*, 1701.

Objection. But the Respondent is now grown so unreasonable as to insist, in his Printed Case, That the Appellant's Cause ought not to be Heard at all by this *Honourable House*; insisting, That the Appellant cannot read any of his Proofs, because they were not Read in *Chancery*.

Answer. This *Objection* will turn upon the Respondent, (who was Plaintiff below in *Chancery*) who for the same reason cannot read any of his Proofs, none of them being Read in *Chancery*.

Besides this *Objection* is quite contrary to the Course of the Court of *Chancery*, who in all Cases have in Appeals and Re-hearings from Decrees by Default, heard Causes upon the Proofs and Merits of them.

And it is against Natural Justice that a Man should lose his Estate without ever being heard.

And it is Conceived in all Cases brought before the *House of LORDS*, the whole Cause upon the Bill, Answer, and Proofs, stands open for their Judgment, as if the same had never been heard.

But if their *LORDSHIPS* will not be pleased to send back the Cause to be Re-heard in *Chancery*,

The Appellant's *Case, as to the Merits, is thus:*

The Appellant's Defence is, That none of the Free-hold and Copy-hold Lands which the Respondent calls the *Trust Estate*, (except Copy-hold Lands of the Yearly Value of 40 *l.* while *Diana* was living) were in the Power of *Anne*, the Grand-mother, to Charge with the said Portion; for that the same were settled in Taile upon the Appellant, for a Valuable Consideration: Which Matter (the Appellant being just come of Age) did not know, when the Respondent drew him into the Agreement before mention'd. Which Settlement is as followeth:

26 June 1669. The Appellant's Father being about to marry *Mary Carne* (who had 5000 *l.* Portion) Articles of Agreement were entred into by *John Prise* the Grand-father, and the said *Anne* his Wife; whereby it was Agreed, That all the Estate at *Wisteston*, both Free-hold and Copy-hold, (which the said *John*, or *John* in Right of *Anne* were seized of) should be settled to the Use of *John* and *Anne*, for their Lives only, with Remainder to *Thomas* their Son, and *Mary* his intended Wife, and the Heirs Males of the Body of *Thomas* by *Mary* (who the Appellant is) with Remainder to the Heirs of the Body of *Thomas*, Remainder to Right Heirs of *Anne*.

Note, That 25th and 26th of *August* 1669, *Thomas* (the Appellant's Father) before his Marriage with *Mary Carne*, made a Conveyance to *THOMAS* Earl of *OSSORY*, and Others, of the Manor of *Pryors Court*, *Froome*, *Dormington* and *Clarkson*, in the County of *Hereford*, and other his own Estate, to the Use of himself for Life, and after upon *Mary Carne* for her Jointure, and after upon the first and other Sons in Taile, (which first Son the Appellant is.)

In 1670. *John* Dying,

23 and 24 September 1678. *Anne*, when Sole, and *Thomas* her Son, by Lease and Release pursuant to those Articles, settled the said *Anne's* Freehold Estate to the Uses in the said Articles; inserting in that Conveyance, That 40 *l. per Annum* should be paid to *Diana* till 3000 *l.* should be paid her.

So that *Anne* having but an Estate for Life in that Free-hold Estate, She had not power to charge it by her Will, and her Copy-hold Lands were bound by those Articles.

And the Appellant is the Issue Male of *Thomas* by the said *Mary*, and well entituled to those Estates so agreed to be and settled as aforesaid.

Objection. Whereas the Respondent, in his Printed *Case*, lays great stress upon it, That the said Marriage-Articles in 1669 are Cancell'd:

Answer. It fell out, that the Appellant's Father sold *Pryors Court*, &c. to Mr. *Foley*, (as is *afterwards* mention'd,) and thereupon, it is proble, he did what he could to suppress his Son's Right to them: For besides that the Articles are Cancell'd, the Original Settlement of those Manors is not Extant, only a Counter-part of it.

But the Cancelling the Marriage-Articles takes not away the Right, (especially of the Issue Claiming under them.)

It rather shews, such Issue had a Just Right, and that there were Endeavours to suppress it.

And the Appellant's Father sold another Estate for 2200 *l.* to one *Carpenter*, in the Year 1683. which by the same Settlement in 1669 was settled upon the Appellant.

Note, That *Diana* had another Provision for a Portion of 3000 *l. viz.*

1 April 1667. *Thomas* her Father Conveyed to her Uncle Sir *William Wray* and others the Mannors of *Pryors Court*, *Froome*, *Dormington*, and *Clarkson*, in the County of *Hereford*, for a Thousand Years, upon Condition to pay her 3000 *l.* at her Age of Twenty one Years, to be raised by the Profits or Sale or Mortgage.

After which *Thomas Prise* having Sold those Estates to Mr. *Foley*, *viz.*

31 Dec. 1687. *Diana* and the Executor of the Surviving Trustee of that Term, together with her Father, assigned that Term to Mr. *Foley*'s Trustees, therein Declaring that *Diana* had accepted of another Security for her 3000 *l.* and Declared her self fully satisfied therewith; And she released all her Right to that Estate, as by the Deed under the Hand and Seal of *Diana* appears.

The Appellant is a Stranger to that Proceding, and knows not what that Security was, but supposing it to be a real Proceding, *Diana* before her Marriage had a Satisfaction for one Portion of 3000 *l.* And now after her Marriage, and Death, her Husband would have another 3000 *l.*

And whereas the Respondent's Printed Case says, The Portion was charged upon the Estate upon *Diana's* Mother's Marriage; And that her Father told her when she Conveyed to Mr. *Foley*, that her Grand-mother's Settlement was good and sufficient.

Those are gross Mistakes; for the Term for a Thousand Years devised by the Grand-mother's Codicill, was purely voluntary long after *Diana*'s Mother's Marriage; and the Grand-mother's Settlement (as called) which was by her Will (for we know of no other) was then no Settlement at all, for she lived till the Year 1689. and till her Death the Will could not take Effect, and she might alter it. And it does not appear *Thomas* her Father then knew of the Will, or knew of the writing of Declaration pretended touching the Copyhold or the Surrender of the Copyhold, which was also a very odd Security, as hereafter appears, *viz.*

As to the Copyhold. The Respondent's Printed Case very fallaciously puts the Grand-mother's Surrender of it first, and the Declaration touching it after, whereas it appears by the said Case, That the Declaration was in *April* 1687. and the Surrender not till *July* 1688. above a Year after; And it is very strange that a Declaration should be made of a Surrender above a Year before the Surrender made, so the Respondent disguises that Matter.

And the said Surrender being made to *Diana* and *Thomas* her Father and their Heirs, *Diana* had no right by it to the Copy-hold but for her Life, and in case she should survive her Father, then to the Inheritance, but if he survived her (as he did do) then he was entituled to the Inheritance, and he afterwards surrendred to the Appellant, by vertue whereof he hath according to the Custom of the Mannor a good Title to it; Besides that the Appellant hath a good equitable Title to the Copy-hold by vertue of the Articles.

As to the Agreement *insisted on by the Respondent.* The Respondent having Married *Diana*,

The End of the Year 1694. There was a Demand made upon the Appellant, by the Respondent, for the said 3000 *l.* and the Appellant being a Young Gentleman, and but newly come of Age, and really not having his Writings of his Title to the said Estate in his Hands (his Father being alive;) but being ignorant of his Title, and taking it for granted (as the Respondent made him believe) that the Lands were charged, and the Common Vogue of the Country being that she had made such a Will, and the Respondent's Demand for the 3000 *l.* and 40 *l. per Annum* Annuity amounting to 3500 *l.* And the Appellant's Estates being greatly Incumbred, there was a Treaty for lessening the Respondent's Demand, and for giving him 2500 *l.* in full, *viz.* 1000 *l.* to be paid presently, and 1500 *l.* in Four Years after, but there was no Agreement in Writing between them, either under Hand or under Hand and Seal; But when the 1000 *l.* was to be paid, the Appellant paid only 810 *l.* for which the Respondent gave, and the Appellant took a Receipt; which, it is conceived, are no ways binding to either of them; But it is plain by the Receipt, That the Respondent made the Appellant believe there were Conveyances which charged the Estate.

And it may be true while the Respondent was under that Apprehension, of his Estate being charg'd; That he might write Letters touching that Treaty and the Abatement of the 1000 *l.* What those Letters were, the Appellant now knows not.

But afterwards and before more of the 2500 *l.* paid, the Appellant getting his Writings, and advising upon them, was acquainted that the said Estate was not liable: and thereupon he refused to Pay the rest.

And the Appellant hopes, that it appearing that the Respondent had not any Original Right to charge the Estate; the Appellant (without any Consideration) shall not be bound in a Court of Equity, by such Treaty or pretended Agreement, to the utter Ruin of him and his Family. Especially the Respondents Portion demanded, being purely voluntary; and so he ought to have no assistance against the Appellant, who is in the nature of a Purchaser.

And whereas the Respondent pretends, That all the Estate which the Appellant enjoys at *Wisteston* came from *Anne* the Grandmother, and was 300 *l. per Annum*. That also is another great Mistake.

For it appears in Proof, that his Grandfather bought of one *Bridstock Harford*, Esq; Pidgeon-house Farm and other Lands, which Cost 1000 *l.* in the Year 1633. Which the Appellant now Enjoys.

And also that the Appellant hath other Lands there, which were the said *Anne's*, which she by her Will gave to her younger Son, Charged with 1200 *l.* Legacies; which Lands the Appellant since Purchased for 1600 *l.*

Also, that the Appellant's Grandfather had Copyhold Lands of his own there, which the Appellant enjoys as his Heir.

Also, that the Appellant hath other Lands there, of his own Purchase and some that he only Rents as a Tenant.

Yet as the Decree is worded all these may be called the Trust Estate; and the Appellant must account for the Profits, and the whole seems liable to be sold towards paying the Respondent's Two Thousand Five Hundred Pounds: Whereas no more of the Trust-Estate ought to be subject, but only so much as the Grand-mother had power to charge: And the Decree ought at least to be rectified in that Particular.

And all the APPELLANT *Desires, is, only to be at Liberty to shew to the Court of* Chancery, *what is, or ought to be exempted from being Charged with the Portion.*

W. DOBYNS.